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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi-2, the 6th August, 1958, 15th Sravana, 1880

S.O. 1679.—In pursuance of the provisions of sub-rule (3) of Rule 140, of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 and in continuation of its notification No. 82/83/57 dated the 25th Agrahayana, 1879 (Saka)/16th December, 1957, published in the Gazette of India, Extraordinary, Part II, Section 3, dated the 24th December, 1957/3rd Pausa, 1879 (Saka) the Election Commission hereby publishes the judgment of the High Court of Judicature for Andhra Pradesh at Hyderabad delivered on the appeal filed by Shri Dippala Suri Dora, Village Sariki, Post Office Thonam, Srikakulam, District, Andhra Pradesh, against the order dated 18th November, 1957, of the Election Tribunal, Hyderabad, in Election Petition No. 83 of 1957.

IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH: AT HYDERABAD.

Tuesday, the thirteenth day of March, One thousand nine hundred and fifty eight.

PRESENT

The Hon'ble Mr. Justice Manoher Pershad.

and

The Hon'ble Mr. Justice Mohd. Ahmed Ansari.

Special Appeal No. 4 of 1957.

Dippala Suri Dora—Appellant (1st Respt.).

1. V. V. Giri,
2. B. Satyanarayana,
3. V. K. Naidu.—Respondents (Petitioner and Respts. Nos. 2 and 3).

Appeal under Section 116(a) of the Representation of the People Act, 1951, against the order of the Election Tribunal, Hyderabad dated 18th November, 1957 and made in Election Petition No. 83 of 1957.

This Appeal coming on for hearing on Monday, Tuesday, Wednesday, Thursday and Friday the 24th, 25th, 26th, 27th and 28th days of February 1958, and upon perusing the grounds of Appeal, and the order of the lower court and the material papers in the case, and upon hearing the arguments of Mr. P. Rami Reddy, Mr. M. S. Apparae and Mr. K. Subrahmanya Reddy, Advocates for the appellant, and of Mr. M. L. K. Nambiar for Mr. P. Somasundaran, Mr. N. Subrahmanyam and Mr. P. Suryanarayana, Advocates for the 1st respondent, and of Mr. C. Obulapathi Chowdary, Advocate for the 2nd respondent, and the 3rd Respondent

not appearing in person or by Advocate, and having stood over for consideration till this day, the Court made the following—

ORDER

Manoher Pershad J.—

In the 1957 General Elections, the following persons, (1) Shri B. Satyanarayana Dora, (2) Shri D. Suri Dora, (3) Shri V. V. Giri and (4) Shri V. Krishnamoorthy Naidu, contested the elections for the Parliamentary Constituency of Parvatipur in the State of Andhra, a double-member constituency, one seat of which was reserved for the schedule tribes, the other seat being general. Of the four, members 1 and 3 were the candidates of the Congress Party and numbers 2 and 4 were of the Socialist Party. Their nominations were filed on 28th January 1957 and after scrutiny of the nominations, polling in the aforesaid constituency took place between 25th February, 1957 and 19th March, 1957. The votes polled were as follows:—

1. Shri B. Satyanarayana Dora	...	1,26,792
2. Shri D. Suri Dora	...	1,24,604
3. Shri V. V. Giri	...	1,24,039
4. Shri V. Krishnamoorthy Naidu	...	1,18,968.

The result of the elections was declared on the 19th March 1957, whereby Shri B. Satyanarayana Dora was declared elected for the reserved seat and Shri D. Suri Dora for the general seat. Shri V. V. Giri, respondent-1 herein, filed an election before the Election Commission, New Delhi on 16th April 1957 challenging the election of Shri D. Suri Dora on the ground that the election of the aforesaid candidate was materially affected by non-compliance with the provisions of the Representation of the People Act, 1951 and the rules framed thereunder, in that:

(1) The returned candidate has been declared elected for the general seat without his filling nomination for the general seat, as required by Section 32 of the Act;

(2) Section 54 of the Act does not authorise grouping of the contestants for the General seat with Scheduled Tribes candidates, who never filed nomination, nor contested for the general seat for the purpose of determining who has secured the largest number of votes for the General Seat, and that if that section be construed to authorise such grouping, it is *ultra vires*, void and illegal;

(3) The result of the elections of Shri D. Suri Dora was materially affected by non-compliance with the provisions of the Constitution of India, Part III of the Constitution, and in particular, Articles 14 and 15 thereof;

(4) The result of the elections of the returned candidate has been further materially affected by the improper acceptance of his nomination in that—

(i) He falsely declared himself to be a member of the Scheduled tribes of Mukka Doras in his nomination papers, whereas in fact he was and is not a member of any Scheduled Tribe and was a Kashatriya; and

(ii) As Shri D. Suri Dora was not a member of the Scheduled Tribes, he could not be deemed to have been duly nominated because his deposit of Rs. 250 only does not comply with Section 34 of the Act."

Shri V. V Giri therefore prayed that the election of Shri Suri Dora be declared void and he be declared to have been duly elected for the general or non-reserved seat, having received the majority of the valid votes. On receipt of this petition, its copy was published in the Official Gazette, as required by sub-section (1) of Section 86 of the Representation of the people Act, 1951 and notices were issued to the respondents.

After the notices were served, an Election Tribunal, consisting of Shri W. S. Krishnaswami Naidu, a retired Judge of the Madras High Court, was appointed for the trial of the petition and Hyderabad was selected as the place of the trial. Parties appeared through their Counsel. Shri D. Suri Dora, the first respondent, filed a counter to the petition by Shri V. V. Giri, which counter was also adopted by the third respondent He has therein stated that his nomination was not for the reserved seat, but was with respect to the constituency, that the declaration

of his having been duly elected for the General seat was legal, valid and was in conformity with Section 54 read with Sections 4 and 5 of the Act, that the illustration to Section 54(4) was in conformity with the Section and was neither void nor illegal, that Section 54 does not contravene Articles 14 and 330 of the Constitution that it was not open to the Tribunal to go into *ultra vires* of Section 54 and also into the questions not raised before the Returning Officer, that non-compliance with the provisions of the Constitution does not affect the result of the elections, that the Representaion of the People Act was within the legislative competence of the Parliament, and that neither the Act, nor Section 54 offended any of the provisions of the Constitution. He *inter alia* denied that he was a kshatriya and stated that the decision in E.P.7/55 was conclusive and that he was a person belonging to the scheduled tribe of Mukka Dora. Lastly, it was stated that in any case the petitioner could not be declared elected when he had become Governor. On these allegations, the Tribunal has framed the following eight issues:—

(1) Whether the respondent Dippala Suri Dora did contest only for the reserved seat and did polling take place on that footing and whether he did by his conduct, waive his rights, if any, to contest for a general seat?

(2) Has the election of Dippala Suri Dora been materially affected by non-compliance with the provisions of the Representation of the Peoples' Act, 1951 and the rules framed thereunder as alleged in the petition?

(3) Whether the procedure followed by the Returning Officer in declaring the first respondent elected in preference to the petitioner for the general seat valid according to Section 54 of the Representation of the Peoples' Act, 1951?

(4) Is Section 54(4) of the Representation of the Peoples' Act 1951 *ultra vires*, illegal and void as being opposed to the provisions of the Constitution? Is the petitioner entitled to raise this plea and has the Election Tribunal no jurisdiction to entertain the same?

(5) Whether the result the election of the first respondent has been materially affected by non-compliance with the provisions of the Constitution of India, *viz.*, Part III of the Constitution and in particular Articles 14 and 15 of the Constitution?

(6) Whether Dippala Suri Dora is a Kshatriya and not a member of the scheduled tribe as claimed by him and whether his nomination therefore not valid?

(7) Whether the petitioner is stopped from questioning first respondent's nomination as a scheduled tribe candidate in view of the petitioner not having raised the objection at the time of the scrutiny of the nomination?

(8) To what relief or reliefs, if any, is the petitioner entitled?

Evidence documentary and oral were led by the parties. On a consideration of the evidence, the Tribunal has held that the nomination and the contest by Sri D. Suri Dora was for the reserved seat, that Section 54 was superfluous after the Delimitation Act of 1952, that the Section was opposed to Articles 14 and 330 of the Constitution of India, that illustration to Section 54(4) was opposed to the Section, that the result of the elections was materially affected by non-compliance with the provisions of the Constitution, that the respondent ceased to be a member of the scheduled tribe; that the declaration concerning the first respondent having been elected to the general seat was void and illegal, that it was open for the Tribunal to go into the questions of *ultra vires*, and that the petitioner was not disqualified from being declared elected on the ground of his having been appointed Governor later. In the result, the Tribunal allowed the petition of Sri V. V. Giri, declaring the election of the first respondent void and holding Sri V. V. Giri, the petitioner as duly elected. It is this order of the Tribunal that is now challenged in appeal by Sri Dippala Suri Dora.

Sri Ram Reddy the learned Counsel for the appellant has advanced various arguments. He has contended that the learned Judge has erred in holding that the appellant has filed nomination paper only for the reserved seat that separate nomination was necessary, that a candidate who has not filed a nomination paper for the general seat could not be declared elected to that seat, that after the passing of the Delimitation Act 1952 the provisions of Section 54 were superfluous that Section 54 was opposed to Articles 14 and 330 of the Constitution, that the Tribunal had the jurisdiction to decide *ultra vires* of Section 54, that the appellant was not a member of the scheduled tribe, that the decision in the earlier election petition No. 7 of 1955 was not conclusive, that the appellant had ceased to be a member of the scheduled tribe and that non-compliance with

the provisions has affected the result of the election. He has formulated the above points into the following question form:—

(1) Is the appellant's nomination, campaign and contest only for the reserved seat; even so, is not the declaration that he is duly elected for the general seat correct?

(2) Is Section 54 superfluous after the Delimitation Act, 1952 and not applicable to the present case and is the illustration opposed to Section itself?

(3) Is it open for a Tribunal constituted unded an Act to declare the provisions of the Act as *ultra vires*? If not, can the High Court sitting in appeal over the Tribunal's Judgment, having the same powers, do so?

(4) If Section 54 is found applicable, and if it is open for the Tribunal and the High Court to go into the question of vires, is Section 54 opposed to Articles 14 and 330 and 8 of the Delimitation Act and is it not in any case saved by Art. 15(4)?

(5) Has the Tribunal jurisdiction to decide that a nomination was improperly accepted on grounds, which could have been raised but not raised before the Returning Officer?

(6) Granted that there is non-compliance of the various provisions of the Act and rules, has the non-compliance materially affected the result of the election?

(7) Was not the Tribunal bound by the earlier decision in election petition No. 7/55 that the appellant was a scheduled tribes men?

(8) Did the appellant cease to be a Mukka Dora on the nomination date?

(9) Even if he had ceased to be a member of scheduled tribes, could he not be declared elected to the General Seat?

(10) Even if the appellant's election is void, could the first respondent be declared as duly elected?

(11) Is the first respondent entitled for the declaration even after the supervening disqualification in view of his having become a Governor?

Shri Nambiar, the learned counsel for Shri V. V. Giri has contended that the Tribunal had rightly held the appellant's nomination and campaign to be only for the reserved and not for the general seat. He has further contended that the Tribunal had rightly held separate nomination for every seat to be necessary, that under sections 32 and 33 of the Representation of the People Act. Adverting to the argument relating to Section 54(4) and its illustration he has contended that Section 54(4) was not only opposed to Articles 14 and 330 of the Constitution, but that it had become superfluous after the Delimitation Act of 1952. It is further urged that illustration to Section 54(4) was opposed to the section. As regards the question whether it was open for the Tribunal to go into the Section being *ultra vires*, he has contended that it was within the Tribunal's competence to decide. Adverting to the argument relating to non-compilance with the provisions of the Constitution, it is contended on behalf of the first respondent that non-compliance thereof had materially affected the result of the election. As regards the question whether the appellant was still a member of the scheduled tribe, it has been argued that having regard to the appellant's declarations and the materials on record, the Tribunal has rightly held the appellant's as having ceased to be a member of such a tribe. As regards the disqualification of Shri V. V. Giri due to his later having become a Governor, it is contended that the Tribunal has rightly held that at the time when the election took place he was not a Governor and by his becoming a Governor later, he was not disqualified from being declared elected. Lastly, it is contended that the legislature cannot disregard the constitutional qualification of the seats into general and reserved, a candidate has to be declared elected either to a particular general seat or to a reserved seat, and an essential pre-requisite for the election to a particular general seat is the filing of a valid nomination to that particular seat. In this connection, the learned counsel of the first respondent has drawn our attention to Articles 81, 82, 84, 101, 109, 326, 327, 329 and 330 of the Constitution as well as to Sections 4, 32, 33, 36, 53, 54 and 55, Rule 68 and Form 24 of the Representation of the Peoples Act.

In order to appreciate the view points involved, it is necessary to refer to the relevant Articles of the Constitution and the relevant provisions of the Representation of Peoples Act. We would first refer to the relevant Articles of the Constitution. The composition of the House of the People is provided by Article 81 which reads:—

Article 81.—"(1) Subject to the provisions of article 331, the House of the People shall consist of—

(a) not more than five hundred members chosen by direct election from territorial constituencies in the States, and

(b) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1)—

(a) there shall be alloted to each State a number of Seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is so far as practicable, the same throughout the State."

Article 84, refers to the qualification for membership of Parliament and reads thus:—

Article 84.—"A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of seat in the House of the People, not less than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

Article 325 provides one joint electoral roll for every constituency for election and is as follows:—

"There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them."

Article 326, directs the elections to be on the basis of adult suffrage and provides—

"The elections to the House of the People to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

Article 327 of the Constitution relates to the power of Parliament to make provision with respect to elections to Legislatures and enacts:

"Subject to the provisions of the Constitution Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

Article 330 pertains to the reservation of seats for the Scheduled Castes and Scheduled Tribes in the House of the People and is to the following effect:—

(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or part of the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory."

It is clear from these Articles that we have no separate electorates based on religion, race, caste or sex; but joint electorates; and the voters are to elect directly members to the House of the People. For this purpose States are divided or formed into several territorial constituencies and the number of members to be allotted to each constituency is determined according to its population. It follows that the Constitution has treated each adult Indian in the Country as a citizen, without taking into consideration his or her caste, creed, religion etc. He or she is a voter, because he or she is a citizen of India and not because the person belongs to any caste or any community. It further follows that a member of the scheduled caste or scheduled tribe is an elector and can be a member of Parliament, there being no distinction between him and any other person not belonging to the scheduled caste or tribe. Moreover, if the voters of constituencies so desire, all the members to the House of the People can belong to the scheduled castes and scheduled tribes. But the Scheduled tribes and scheduled castes were backward in education and their economic condition was so bad that they could not come up to the level of other citizens unless some provision was made to help them to come up to that level. It is on this basis that this provision contained in Art. 330 was made for them in the Constitution. It only means that the Constitution secured for the scheduled castes and scheduled tribes the minimum number of seats according to their population. The constitution has not created any separate electorates for them by reserving seats for them, nor has it created any separate constituencies for them. It therefore does not preclude them from getting more seats as citizens of India.

The two Acts of Parliament that deal with the allotment of seats and fixing the number of reserved seats as also other matters pertaining to election are the Representation of the People Act, 1951 (Act 43/51) and the Delimitation Commission Act of 1952 (Act 81/1952). We would first refer to the relevant provisions of the Representation of the Peoples Act. Section 4 refers to the qualifications for membership of the House of the People and says:—

"A person shall not be qualified to be chosen to fill a seat in the House of the people.....unless

(a) in the case of a seat reserved for scheduled castes in any State, he is a member of any of scheduled castes whether of that State or any other State, and is an elector for any Parliamentary Constituency;

(b) .....

(c) .....

(d) In the case of any other seat, he is an elector for any Parliamentary Constituency."

Section 7 relates to the disqualifications for membership of Parliament or of a State Legislature, Section 32 provides for the nomination of candidates for election and reads thus:—

Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act."

Section 33 deals with the presentation of nomination paper and requirements for a valid nomination. Clause 1 of that Section provides:—

"On or before the date appointed under clause (a) of Section 30, each candidate shall either in person or by his proposer between the hours of 11 O'clock in the forenoon and 3 O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the

prescribed form and signed by the candidate and by an elector of the constituency as proposer."

Clause (2) of that Section runs:—

"In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a scheduled caste or as the case may be, scheduled tribe of the State;.....

Sub-section (6) of that Section runs as follows:—

"Nothing in this Section shall prevent any candidate from being nominated by more than one nomination paper for election in the same constituency."

Section 34 relates to the question of deposits and is to the following effect:—

(1) "A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited—

(a) in the case of an election from a Parliamentary constituency, a sum of Rs. 500 or where the candidate is a member of a scheduled caste or scheduled tribe a sum of Rs. 250/-; ....."

Section 36 deals with the scrutiny of the nominations. Section 55, which refers to the eligibility of the members of the scheduled caste or scheduled tribe to seats not reserved for those castes or tribes, enacts:

"For the avoidance of doubt, it is hereby declared that a member of the scheduled caste or of the scheduled tribe shall not be disqualified to hold a seat not reserved for the members of those castes or tribes, if he is otherwise qualified to hold such seats under the Constitution and this Act."

Section 54 lays down the special procedure at elections in the constituencies, where seats are reserved for scheduled castes or scheduled tribes. Sub-section (1) thereof runs thus:—

"The provisions of this section shall apply in relation to any election in a constituency, where the seats to be filled include one or more seats reserved for the scheduled castes or for the scheduled tribes (hereinafter referred to as 'reserved seats')".

The relevant provision of this Section which applies to the present case is sub-section (4) and are as follows:—

"If the number of contesting candidates qualified to be chosen to fill the reserved seats exceeds the number of such seats and the total number of contesting candidates also exceeds the total number of seats to be filled, a poll shall be taken; and after the poll has been taken, the Returning Officer shall first declare those who, being qualified to be chosen to fill the reserved seats, have secured the largest number of votes, to be duly elected to fill the reserved seats, and then declare such of the remaining candidates as have secured the largest number of votes to be duly elected to fill the remaining seats."

Illustration to this sub-section is to the following effect:—

Illustration: At an election in a constituency to fill four seats of which two are reserved, there are six contesting candidates A, B, C, D, E, and F and they secure votes in descending order, A securing the largest number, B, C and D are qualified to be chosen to fill the reserved seats, while A, E and F are not so qualified. The Returning Officer will first declare B and C duly elected to fill the two reserved seats and then declare A and (not A and E) to fill the remaining two seats."

We would next refer to the provisions of the Delimitation Commission Act, 1952. Section 8 deals with the manner of making readjustment and delimitation. Section 8 clause (2) which is relevant for the present case provides:—

(a) All constituencies shall be either single member constituencies or two member constituencies;

(b) wherever practicable, seats may be reserved for the scheduled castes or for the scheduled tribes in single member constituencies;

(c) in every two member constituency, one seat shall be reserved either for the scheduled castes or for the scheduled tribes, and the other seat shall not be so reserved."

In the light of these provisions, we will now proceed to deal seriatim with the arguments of the learned counsel for the appellant and the first question that falls for determination is whether the nomination, campaign and contest of the appellant was only for the reserved seat.

Rule 4 of the Representation of the Peoples (Preparation of Electoral Rolls) Rules, 1956, which deals with the form and language of the electoral roll runs thus:—

"Electoral roll for each constituency shall be prepared in such form and in such language or languages as the Election Commission may direct."

In pursuance of the said Rule, nomination of a candidate has to be in Form 2(A). One portion of the Form has to be filled by the proposer nominating the candidate. The other portion has to be filled by the candidate accepting the nomination. This form further contains a provision for the declaration in the case of a nomination filed by a member of the scheduled caste or scheduled tribe that he must declare himself a member of such caste or tribe. It is pointed out that there need not be a separate form of nomination for a reserved seat or for other seat and that a common form is used for both. It is not denied that the appellant could be nominated as a candidate for election to any of the two seats in the constituency, but the contention is that if a candidate contests for the reserved as well as the general seat, there should be two separate nomination papers, one for the reserved and the other for the seat which is not reserved. In the instant case, admittedly, there is only one nomination paper, Ex. P. 1(A) dated 28th January 1957. It begins with the words: "I hereby nominate Dippala Suri Dora as a candidate for election from the Parvathipuram (reserved) Parliamentary constituency". There are two other nomination papers, Ex. P-1(B) and P. 1(C) proposing the name of the appellant for election in terms similar to Ex. P. 1(A). The contention of the appellant is that the nomination is filed only with respect to a constituency and not with respect to a particular seat. It is further contended that the nomination and contest of the appellant was not only for the reserved seat and there is nothing in the nomination paper to exclude his application to the general seat, for which, the appellant was admittedly qualified. The contention of the other side is that the appellant was not only in fact nominated as a candidate to fill the reserved seat, but his campaign and contest was all along for the reserved seat, that he presented the nomination paper for the reserved seat and paid the concession deposit of Rs. 250. The argument is that Ex. P. 1(A) P. 1(B) and P. 1(C) dispel any doubts arising from the form of nomination paper that it does not provide for the nomination for any particular seat, inasmuch as the appellant by his nomination paper has clearly expressed that he is standing for the reserved seat. Excepting for the word 'reserved' appearing in 'Parvathipuram (Reserved) Parliamentary Constituency', there is nothing in the Form to indicate that the candidate was contesting for the reserved seat alone. Further reliance is placed on Ex. P. 15 and Ex. P-16 to show that the appellant had contested for the reserved seat alone. Ex. P-15 is the hand-bill requesting the voters to give their votes to Shri Krishnamurthy for the general seat and to Shri D. Suri Dora for the reserved seat. Ex. P-16 is a wall poster to the same effect. On the assumption that these documents show the campaign and propaganda on behalf of the appellant to have been carried for his being candidate to the reserved seat, the other question that falls for consideration is whether on the appellant's failure to be elected for the reserved seat, the nomination paper by him could be accepted as one for the general seat, for which he was eligible also and whether he could be declared elected to that seat as has been done by the Returning Officer. The allotment of symbols does not carry the matter further. So also, the declaration by the appellant in the nomination form that he belongs to the scheduled tribe, for the contention of the appellant is that since there is no specific provision in the Representation of the People Act that there should be a separate nomination for a reserved and unreserved seat, there is no bar for his being declared elected to the general seat if he succeeds in polling the highest number of votes. It is contended against this argument that conceding that the appellant was eligible for the general seat, since he had not filed a separate nomination paper, which is necessary under the provisions of the Representation of the People Act, the Returning Officer could not have declared him elected for the general seat. Therefore, it becomes necessary to ascertain whether such a separate nomination

paper is necessary under the provisions of the Representation of the People Act. The Tribunal relying on Sections 32. 33, 34, 36, 54(4) has held that a separate nomination paper is necessary. Section 32 deals with the nomination of a candidate for election. The contention is that though it deals with the nomination of a candidate for election, yet the nomination could be only to fill 'a seat' and that seat may be 'reserved' or it may be the other seat. It is urged that it contains a declaration for the reserved seat and it would not amount to the candidate having applied for the two seats, because it is doubtful whether a person can apply for two seats in the same constituency. The idea, in our opinion is not for applying for two seats, but for applying for one seat or the other. In other words, it is 'either' 'or' and not both. Section 33(1) and (2) which provide for filing of nomination paper and a declaration specifying a particular caste or tribe would mean not that the nomination paper will be invalid for the seat which is not reserved without the declaration, but that for making it valid for the reserved it must contain a declaration. Sub-section (6) of Section 33 which provides for more than one nomination paper applies to a single member constituency also and a candidate can have more than one nomination paper to safeguard against mistakes in filing the nomination paper. Section 33 has to be read as a whole and its clauses (2) clearly shows that there can be one application for either of the two seats, reserved seat and the seat which is not reserved. In short, the candidate can say, he is qualified for the reserved seat as well as the seat which is not reserved and he wants to get elected for one of the two according to the will of the voters. It is not denied that the appellant can do it, but the contention is that he must file two separate nomination papers for it. The form of the nomination paper that has been prescribed is for either of the two seats and to us also it appears to be the correct form. If as it is urged that there should be two separate forms, it would amount to this that the candidate who is contesting for the reserved seat as well as the general seat will have to fill the two forms that he is seeking the election for either of the two seats. That is what exactly the present form is. Excepting these two provisions, we could not find any direct provision to the effect that there should be separate nomination papers in the same constituency for the reserved as well as the unreserved seat. The learned counsel for the respondent very rightly conceded that there was no specific provision, but relying on the words 'a seat' used in various provisions of the Constitution and the Representation of the People Act and the constitutional classification of the seats has contended that the essential prerequisite for a declaration of an election to a particular seat was the filing of a valid nomination paper for that particular seat. In this connection, learned counsel drew our attention to Articles 81, 82, 84, 101, 119, 326, 327, 328, 330 and Sections 4, 32, 33, 36, 53, 54 and 55 of the Representation of the People Act, Rule 68, Form 24 and Articles 101, sub-section (c) 1 to 3. No doubt, in the aforesaid provisions, the word 'seat' is used, but this does not advance the argument of the learned counsel any further. We are doubtful whether a candidate can apply for two seats in the same constituency, but the idea, as stated earlier, is not applying for two seats, but applying for one seat or for the other; in other words, it is 'either' 'or' but not both and a candidate can say "I am qualified for the reserved seat as well as the seat which is not reserved and I want to get elected for one of the two". The Returning Officer has followed the procedure laid down in Section 54(4) of the Representation of the People Act, where seats are reserved for a scheduled caste and a scheduled tribe and has declared the appellant elected for the general seat. The Tribunal has not accepted the view of the Returning Officer and has held that the scheme of the Act seems to be that the reserved seat is treated as a separate entity and Section 54(4) or its illustration was not applicable to a case where there was a reserved seat in the double member constituency. It has further held that Section 54 in its entirety has become superfluous after the Delimitation Commission Act of 1952 and the section does no longer serve any purpose. We are unable to accept the view of the Tribunal for so long as double member constituencies exist, Section 54 in its entirety cannot be held as having become a superfluity particularly in view of the provisions of sub-section 1 of Section 54 which says:—

> "The provisions of this section shall apply in relation to any election in a constituency where the seats to be filled include one or more seats reserved for the scheduled castes or for the scheduled tribes (hereinafter referred to as 'reserved seats')."

It follows that the section is applicable even where there are two seats, one being reserved for the scheduled caste or for the scheduled tribe. There is nothing in the Delimitation Act which conflicts with the provisions of Section 54, because the former Act still allows two member constituencies where a seat is reserved for scheduled caste or for the scheduled tribe.

The next question that arises is whether the illustration to Section 54(4) is opposed to the section itself. The contention of the appellant is that it is not opposed but is in conformity with the sub-section. On the other side, it is urged that the words 'remaining seats' or 'remaining candidates' in Section 54(4) must refer to those, who have not only been left over after those who have been declared elected, but only such seats or candidates as pertain to the non-reserved seat and the word 'remaining' must be read in the context and could only mean 'seat' or 'candidate' other than those reserved. It is further argued that that could be the proper and reasonable meaning to be put on the words "remaining seats" and "remaining candidates" taking into account the scheme of the Act, where it envisages to distinguish the categories of seats and two distinct classes of candidates *viz.*, reserved seat and the remaining seat, and the scheduled caste or scheduled tribe candidate who stood for the reserved seat and the other candidate who contested the other or remaining seats. We are reluctant to accept the contention of the learned counsel for the respondent. The language of Section 54(4) is clear and it does not admit the construction that is sought to be put upon it by the respondent. Nor do we think the legislature has thereby shown any intention of departing from the general rule that the person having secured the highest number of votes should be elected after the reserved seat has been filled. Illustration to Section 54(4) simply exemplifies the general idea conceived in Section 54(4). We may at this stage point out that the Tribunal has not accepted the interpretation of sub-section, which is sought by the respondent. We therefore repel the contention that illustration to Section 54(4) is opposed to the main provision. It is further contended on behalf of the respondent that if Section 54(4) is made applicable and illustration to the section is held not opposed to that provision, the illustration and even clause (iv) of section 54 are ultra vires, illegal and void as being opposed to the provision of the Constitution, in particular Articles 330 and 14 of the Constitution. In other words, it is contended that the appellant gets a chance to both the seats, while the respondent gets a chance for only one seat which is not reserved. We do not see any force in this argument. Article 330 of the Constitution does not debar a person belonging to the scheduled tribes from seeking election for a seat which is not reserved, and a provision enabling him to do so is not colourable evasion of any constitutional provision. The learned counsel for the respondent admits the point that the appellant can contest the election, but urges that he should file two applications or file two separate nomination papers. We have shown above that it is not necessary. Therefore there is no force in the contention that Section 54(4) is opposed to Article 330 of the Constitution, when it is admitted that a scheduled tribe candidate could compete for the general seat. Article 330 only means that the Constitution has made provision for the scheduled caste and scheduled tribe by fixing the number of seats according to their population. We also do not find any force in the other contention that the provision offends Art. 14 of the Constitution. What is contended is that any legislation which has the effect of reducing the number of non-reserved seats by being filled by persons belonging to scheduled castes or scheduled tribes has the effect of infringing Art. 14 of the Constitution. We are not prepared to accept this contention. Article 14 of the Constitution provides that a State shall not deny to any person equally before the law or the equal protection of the laws within the territory of India and has been held not to exclude reasonable classification for the purpose of legislation. Discriminatory legislation is therefore not invalid provided it has a reasonable basis and has a rational relation to the object that is sought to be secured by the legislation in question. We have not been convicted how Art. 14 which secures to a citizen equality before the law and equal protection of laws is infringed when a citizen is allowed the benefit of the general rule of being elected when he has secured the largest number of votes. Moreover, Art. 15 enjoins on the State that there could be no discrimination against a citizen on ground of religion, race, class, sect or place of birth or any of them, but clause (iv) of Art. 15 empowers the State to make special provision for socially backward classes of citizens or for the scheduled caste or for the scheduled tribe. Therefore any special provision in favour of the scheduled castes or the scheduled tribes would have the sanction of the Constitution. What is contended is that under the colour of securing to the scheduled caste or the scheduled tribe, the representation in the legislatures in proportion to the weightage of their population, the rights and interests of the sections or community who do not belong to the scheduled caste or scheduled tribe have been interfered with and thus there is discrimination. This argument is devoid of force. The impugned provision has treated every person alike and there is no discrimination against any citizen on grounds of religion, caste ir sect or place of birth or any of them. It has provided that each adult person as a citizen of India can be elected on his getting the majority of votes and there is nothing discriminatory therein. If such a person in addition to this common right has some other right, that its because the Constitution confers such a right on him. In short, the Constitution has

removed all distinctions of caste, creed or community but has allowed some advantages to members of scheduled castes or scheduled tribes. Therefore if the law allows him the right of contest, it cannot be held unconstitutional. If the voters of all the constituencies in the whole of India so desire, all the members of the House of the People can belong to the scheduled caste or scheduled tribe. Art. 330 of the Constitution only means that the Constitution secures for the scheduled castes or scheduled tribes the minimum number of seats according to their population and that does not prevent them from getting more seats as citizens of India. But for this exception there is no distinction between them and the other citizens. The Constitution has not created any separate electorate for them by reserving seats for them, nor has it created any separate constituency for them. There is, therefore, in our opinion, no discrimination and the returning officer has rightly declared the appellant to be elected to the general seat.

In view of this finding, it is unnecessary for us to go into the other questions raised by the appellant i.e., whether it was open for the tribunal constituted under the Act to declare the provisions of the Act as ultra vires, whether the High Court sitting in appeal had the powers to do so, whether the tribunal had jurisdiction to decide that a nomination was improperly accepted on grounds which were not raised before the Returning Officer, whether non-compliance with the provisions of the Act has materially affected the result of the election, but as the learned counsel for the parties have argued them at length, we would discuss them and give our findings.

There is no force in the argument of the learned counsel for the appellant that the tribunal was not competent to decide the vires of the provisions of the Representation of the People Act. The respondent Sri V. V. Giri had not contended that the entire Act was ultra vires, but a particular provision viz., Sec.54 (4) contravenes the provisions of the Constitution and has interested with the fundamental rights guaranteed under it. It is only when the entire Act is challenged that the Tribunal constituted under the Act would be without power to go into that question. The cases relied upon by the learned counsel viz. SYED MAHMUD v. STATE OF MADRAS (1953 Madras 105) and THE BENGAL IMMUNITY CO. v. STATE OF BIHAR (1955 S.C. 672) do not help the contention of the learned counsel. They state the general principle that it would not be open to contend before the Tribunal constituted under an enactment that the Act creating it is ultra vires as the Tribunal owes its existence to the enactment. As stated above, in the instant case, it is only one of the provisions of the Act and not the entire Act that is challenged. There is equally no force in the contention of the learned counsel for the appellant that the High Court has no power to decide the question of ultra vires in appeal having regard to the scope and the limitations. In this connection, our attention was drawn to sec. 116(A) of the Representation of the People Act and sec. 107, C.P.C., which deal with the powers of the appellate Court. We may in this connection point out that the powers of the High Court sitting in appeal are not restricted and limited only to section 107 or Sec. 116(A). The Hih Court sitting as a Court of Appeal has got powers apart from the aforesaid provisions. To accept the contention of the learned counsel for the appellant would amount to this that neither the Tribunal nor the High Court can go into the question of the vires of the Act. It would follow therefore that that question has to be left undecided and the party challenging the vires of the provisions has to go without any redress. On our questioning the learned counsel for the appellant whether that was the correct position, he in reply stated that though the respondent could not challenge the vires of the Act under Art. 226 or 227 of the Constitution of India, still he can move the Supreme Court under Art. 136 of the Constitution of India. We are doubtful whether this is possible. But we do not wish to enter into a detailed discussion as we are of the opinion that the High Court has powers to go into the question. The case relied upon is KARUPPAYYA v. PONNUSWAMI (A.I.R. 1933 Madras 500). This was an apeal under Letters Patent and the question arose whether the High Court had power to grant an injunction under its inherent powers in cases not governed by Or. 39, C.P.C. It was held that in the light of sec. 21 of the Letters Patent, the High Court had no power to grant any injunction. With due respect to the learned Judges, we do not agree with this view.

We next turn to the argument whether the Tribunal had jurisdiction to decide that a nomination was improperly accepted on the ground that it could have been raised but not raised before the Returning Officer. In this connection, we may point out that issue No. 7 was framed by the Tribunal for this purpose and it

appears from the order of the Tribunal that the appellant's counsel gave up this issue. When the issue was given up, we fail to understand how this point can be argued again in appeal. The learned counsel for the appellant had contended that the question raised was a legal one and the mere fact that the counsel for the appellant did not argue that point in the lower Court would not act as an estoppel. It is further urged that the appellant was not estopped from urging this point as an additional ground in the appeal. It is no doubt true that on questions of law, there cannot be any question of estoppel and the appellant can raise this as a ground of objection in the appeal, but when the appellant as a matter of fact has given up this point, he cannot, in our opinion, be allowed to agitate the same. We therefore repel the contention and we do not wish to go into a detailed discussion on this question. The decision in G. RAJANAYANAR v. N. T. VELUSSWAMI THEVER OTHERS, w.p. 675 and 676 of 57 decided by a Bench of the Madras High Court on 21st October, 1957 does not help the contention of the learned counsel because that was a case where the learned Judges were discussing the position of a candidate whose nomination was rejected and that was not a case of the returned candidate whose nomination was improperly accepted. It follows therefore that so far as the point in question is concerned, this has not been sidered by that Bench.

The next question that has to be determined is whether there has been non-compliance with the various provisions of the Acts and rules and if so had it materially affected the result. The non-compliance alleged is that only one nomination paper was filed when the Act provides that there should be separate nomination papers for separate seats. We have already held that there is no specific provision in the Representation of the People Act for filling of separate nomination papers. So the question of non-compliance does not arise. It is conceded on behalf of the parties that mere non-compliance of the provisions is not sufficient unless it is shown that non-compliance has materially affected the result of the election. What meaning has to be given to the words "materially affected" has been the subject of various judicial decisions. It depends on the facts of each case. In the case of VISHIST NARAIN v. DEV CHANDRA (1954 Supreme Court 513) their Lordships of the Supreme Court have held that the words "result of the election has been materially affected" indicate that the result should not be judged by the increase or decrease in the total number of votes secured by the returned candidates but by proof that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate. It is further observed that it cannot be held that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. Should the petitioner fail to adduce satisfactory evidence to enable the court to find in his favour the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand.

In another case, JAMUNA PRASAD v LACHHI RAM (1954 Supreme Court 686) it has been observed by their Lordships that it must be proved that but for the votes obtained by the returned candidates by corrupt or illegal practices....., such other candidate would have obtained a majority of valid votes.

Yet in another case. T. C. BASAPPA v. T. NAGAPPA (1955(1) S.C.R. 250), the question as to what meaning should be given to the words "materially effected" came up for consideration. Dealing with the point, Mukerjee, J. as he then was, observed at page 264 thus:

> "There was evidence undoubtedly to show that some of the voters went away as the polling did not commence at the scheduled time, but the exact number of these persons is not known and there could not be any positive evidence to show as to how many of them would have voted for the appellant. If the Tribunal had on basis of these facts alone declared the appellant to be duly elected candidate, holding that he could have secured more votes than respondent-1, obviously this would have been an error apparent on the fact of the record, as such conclusion would rest merely on surmises and nothing else".

It follows from this that an Election Tribunal should not act on surmises, but its conclusion should rest on positive evidence.

In the case of PARTHASARADHI v RAMCHANDER RAO & OTHERS [1955(11) A.L.T. 766], identical question has arisen and a Full Bench of the Andhra High Court held:

> "In order to invalidate the election the petitioner has to prove how many of the voters have not complied with the terms of rule 17 and how the result of the election has been materially affected thereby".

Relying on these authorities, it is contended on behalf of the appellant that in the absence of any proof on behalf of the respondent, Sri V. V. Giri that he would have secured more votes, had the appellant not given a false declaration, it cannot be said that the result of the election has been materially affected. It is no doubt true that if the party challenging the declaration comes forward with the allegations of mal-practices and such other acts, the burden of proof is on that person and unless he proves that had it not been for the mal-practices, he would have secured more votes, he would not have succeeded and it could have been then said that the result of the election was not materially affected. But in the instant case, the challenge is not on any mal-practice but non-compliance with the provisions of an Act. If the respondent succeeds in establishing the non-compliance, in other words, if the respondent had succeeded in proving that separate nomination paper was necessary, the declaration of the Returning Officer that he is elected for the general seat would naturally amount to materially affecting the result which deprives the respondent from being declared elected. In this view of the matter, we do not wish to enter into a detailed discussion of the authorities cited by the learned counsel for the appellant.

The next important question that arises is whether the appellant ceased to be a moka dora in the nomination date. Issue-6 related to this. Evidence was led by the parties and the Tribunal on the evidence has held that the appellant and his family had cut themselves away from the moka dora hill-tribes and given up their ordinary avocation as well as the tribal customs and manners and has ceased to be a member of the scheduled tribe and for all practical purposes was acting a kshatriya on the date of his nomination. This issue arises from an allegation by the respondent Sri V. V. Giri that the appellant declared himself to be a member of the scheduled tribe of Moka doras in his nomination paper, whereas in fact he was not and is not a member of any scheduled tribe and was a kshatriya. The appellant denies that he has ceased to be a moka dora and was a kshatriya. The burden was on the respondent. He has relied on a number of documents filed on his behalf and on the oral testimony of P.Ws. 3, 8, 10, 11, 15, 16, and 17. As against this, the appellant also has filed a number of documents and has examined a number of witnesses including himself. It is unnecessary for our purpose to go into the question of the origin of caste in Hindu Society and conversion of a person belonging to one caste to another within the fold of Hindu Society, but we would concentrate our attention on the question as to whether a member belonging to a scheduled tribe could cease to belong to that tribe. The Tribunal has not only gone into this question but has considered the other aspect also that a member of a scheduled tribe or a scheduled caste can raise himself to the status of a Kshatriya and become a Kshatriya by adopting their manners and customs. The learned counsel for the respondent also had advanced that argument, but we think it is unnecessary for our purpose to go into that question and discuss that aspect. We therefore confine ourselves to the point in issue, viz., whether the appellant has ceased to be a member of moka dora. The documents relied upon are Exs. P. 4, P. 7, P. 8, P. 9, P. 10, P. 11, P. 13, P. 19, P. 21, P. 23 and P. 24.

Ex. P. 4 is the national register, where he is mentioned as belonging to the Kshatriya caste. Exs. P. 7 to 9 are voters' lists, where the appellant is described as a Kshatriya. Exs. P. 10 and P. 11 are loan application and security bond respectively wherein the appellant describes himself as a Kshatriya. Exs. P. 12 and P. 13 are of 1944 to which the appellant was a party, wherein he describes himself as Kshatriya. Ex. P. 19 is an agreement entered into with the Government Agriculture Department executed as late as 1956 wherein he describes himself as a Kshatriya. Ex. P. 21 is the mining lease obtained by the appellant in 1953 where he described himself as a Kshatriya. Ex. P. 23 is a certified copy of the appellant's deposition before the Sub Divisional Magistrate of Parvathipuram where his caste is shown as 'Kshatriya'. Ex. P. 24 is the certified copy of the mortgage bond dated 30th June 1948, where again the appellant has described himself as a Kshatriya. As against this documentary evidence of the respondent, there are a number of documents filed on behalf of the appellant wherein he and his ancestors are described as mukadars or konda doras. Some of the documents are ancient documents, R—3 to R—9 being of the years 1885, 1895, 1892, 1894, 1897, 1900 and 1912 respectively. Apart from the ancient documents there are other documents filed on his behalf viz., R—13, R—14 and R—15 which are extracts

from the suit registers in O; S. 417/1892, 397/36 and 497/32 respectively, where the appellant's father and brothers are described as mukadoras. Yet other documents R—17, R—18 and R—19 possessory mortgage deeds of 1912, 1910 and 1911 also describe the appellant's ancestors as mokadoras. Ex. R—20 an extract from the Death Register also shows the elder brother of the appellant as a Mukadora on 25th March 1941. R—2 the Admission Register of the Elementary School of Thonam village, Sariki Taluq shows that the appellant was admitted as pupil in the School in 1926 and his caste is mentioned as mukadora. The documentary evidence produced on behalf of the appellant shows that from 1885 upto the date of the election, the appellant belonged to the muka dora tribe. The documents of the respondent which date from 1928 show the appellant and his family members as Kshatriyas. The respondent has not filed any documents prior to 1928. If the documents of the respondent are taken into account, it would follow that it covers only a period of about 30 years i.e. from 1928 onwards showing the appellant and the family members as Kshatriyas. It follows therefore that prior to 1928 the appellant was a moka dora. The documentary evidence of the parties being conflicting on the basis of that alone, it is difficult to come to any conclusion.

Now, we have to see whether the oral evidence produced on behalf of the parties is sufficient to establish that the appellant ceased to be a moka dora. The oral evidence relating to this consists of the depositions of P.Ws. 3, 8, 10, 11, 15, 16 and 17. P.W. 3 is a non-gazetted Tahsildar of Jaipur. He proves the register endorsement in Exs. P. 12 and P. 13, and says to his knowledge the first respondent was a Kshatriya and that he has been observing the customs and manners of Kshatriyas of Pachipenta. In cross-examination, he says that the Dippals family belongs to the Kshatriya caste and not muka doras and muka dora family owns mukasa of Sanki. These mukasas call themselves as Kshatriyas. The witness admits that he is not aware of the customs distinguishing the two communities excepting that the ladies of Mukadoras come out and work and Kshatriya ladies do not come out. He further admits that he has not attended any religious ceremonies of either of these two families. P.W. 8 was the Diwan of Salur and the Chairman of the Municipality. He is admittedly a Kshatriya. He says that the zamindars of Pachipenta Thonam and Mamidipalli are Kshatriyas and speaks of the marriage relationships between those families and that of the Kshatriyas and the families of Chikati, Darokota and other families. He speaks of the manners and customs of the Kshatriyas and says that muka doras do not wear sacred thread, upanayan is not existent among muka doras, pollusion is observed during the child birth and death and marriage ceremonies are reduced to one day and those are not observed among the muka doras. He goes on further and says that Kshatriyas have Brahmin priests who officiate during religious ceremonies, but muka doras do not have their priests but have their own headmen who act as priests. He speaks of the relationship between Jalamur and Pachipenta families. In cross-examination, he says he does not know any girl of Jalmuri family married to Dippala family, that he does not know the ceremonies of any family of muka dora caste and that he has not gone to muka doras house since he had no need to go, that no girl of Dippala was married to his family as they belong to the same Gothra. He says further that Thyada Pasupetty family, Ganathuri family, Dippala family are not muka doras, that all of them previously were mukasadars before their estates were abolished by legislation. P.W. 10 is an Abkari contractor. He says that he knows the appellant as a Kshatriya, because he was related to Pachipenta and Mamidipalli families. P.W. 11 is a member of the old Zamindari of Pachipenta. He speaks of the relationship of Thyadapusapati families consisting of Mamidipally, Pachipenta and Thonam families and the kshatriya families and Chikati, Takali and Yayapatnam etc. In cross-examination, he says that some of the zamindars were konda doras and muka doras, but they call themselves kshatriyas because they are zamindars though they do not own any estate. He further says that the zamindar of Thonum is related to him and a kshatriya of the Pachipenta family. P.W. 15 refers to the inter-marriage between the several families some of whom were originally muka doras, but later recognized as Kshatriyas with the kshatriya families. P.W. 16 is a Brahmin prohit who says that he is a prohit for the appellant's family and he speaks of the appellant's family adopting kshatriya customs and not of mukadoras and observing pollusion etc. He further says that they wear sacred threads and perform homams in marriage. He admits that he has not officiated as prohit for any moka dora. P.W. 17 is a relation of the Zamindar of Salur who is admittedly a kshatriya. He says he knew the appellant and the sister of the appellant was married to his wife's brother and the appellant's second daughter was given in marriage to his brother-in-law. He also says that mukadoras were doing road work and bringing firewood, but he has not gone to attend any function in the mukadora family. Against this evidence of the respondent, the appellant has examined R.Ws. 1 2, 3, 5, 7 and himself on the question as to whether he was a mukadora or not. R.W. 1 who is a mukadora states that the appellant was a muka dora and the witnesses

maternal uncle's daughter was given in marriage to the appellant's elder brother Ganganna Dora. Then he speaks of customs. He says that he was wearing a sacred thread and some of the members of his community were wearing sacred thread. But in cross-examination when he was asked to point out the sacred thread, he said that he did not wear it and said wealthy people wear sacred thread in the community and poor people do not. He further admits that he did not attend any marriage or dinner in the house of the appellant. R.W. 2 is also a mukadora who says that his daughter is the wife of the appellant's brother, but in cross-examination, he corrects himself and says that it was his brother's daughter and not his own daughter. He further says that "for the last 40 or 50 years mukasadars who call themselves mukadoras do not mix with us, nor come and dine with us or do they marry". R.W. 3 is a kondadora. He says that mukasadars of Thonam, Sariki, Kurukuti Dandigam Mammidipalli and Pachipenta are mukadoras and there is difference in the manners and customs between kondadoras and mukadoras. He is a school manager and speaks of the admission of the appellant and says that the appellant's family was adopting the same old customs. R.W. 5 is a kshatriya and he says he came in contact with the appellant but did not attend the marriage function in his family. He says there is no relationship between mukadoras and kshatriyas. In cross-examination, he speaks of the appellant wearing sacred thread, that his brother also wears sacred thread, that they began to wear it from the time of the marriage. R.W. 7 is a mukasadar of Kurukutti and is a mukadora. He says that the appellant was his mother's brother and not related to kshatriyas. He speaks of the customs of the mukadoras and says that Suri Dora wears sacred thread that from the time of their ancestors and his family followed mukadoras' customs and that kshatriya families also wear sacred thread. He also speaks about the marriage of the appellant with the sister of mukasadar of Mamidipalli. The appellant in his statement deposes that he is a mukasadar of Sariki, that he is a mukadora by caste and a hill-tribe and that Mokasadars of Nandigama, Mamidipalli, Kurukutti are within the Zamindari of Pachipenta and they are mukadoras and the Zamindar of Pachipenta is related to caste elder Korra Ontanadora. He denies that he is adopting any of the manners and customs of kshatriyas but sticks to his old tribal custom. He admits that Salur, Chikati, Jeypore are kshatriya families, but says there is no relationship between them and the other zamindars. He further says that there is no caste distinction between mokadoras and kondadoras and the distinction is in their economic status. On behalf of the appellant, it is contended that the Tribunal itself accepted the deposition of the respondent's witnesses only to the extent of establishing the relationship and as none of the witnesses say that the appellant and his family members have given up their custom and adopted the kshatriya customs, this evidence, he urges, is not sufficient to prove that the appellant has ceased to be a mukadora. It is next contended that the respondent's witnesses say that the appellant and his family members are kshatriyas because they have marriage connections and relationship with Panchipenta and Mamidipalli families, but admittedly both the families are mukadoras. Relying on the case of Maharaja of Kholhapur *v.* Sundram Iyer (1925 Madras 497) it is contended that caste is the result of birth and not of choice or volition and though a person may lose caste, he cannot by any act of his rise to a higher caste. He further urges mere performance of ceremonies which are performed by the twice-born classes would not elevate the scheduled tribe or scheduled caste man to the status of the twice-born class. It is next urged that even if the evidence of the respondent is taken as its face value, it only shows that for the last 20 to 30 years the appellant and his family members were following the customs of kshatriyas, but this period of 20 or 30 years he urges would not be sufficient to hold that the appellant who was originally members of a tribe had accepted Hinduism and come within its fold. In this connection learned counsel drew our attention to the case of Sahdeonarian *v.* Kusum Kumari (1923 P; C. 21) and Chunku Manjhi *v.* Bhabani Majhan (1946 Patna 218) Lastly, it is urged that in the face of the President's Order and the earlier decision of the Tribunal, in Election Petition 7/55, that the appellant was a tribesman, it cannot be held that the appellant had ceased to be a member of the mukadoras.

On behalf of the respondent, it is contended that admittedly P.Ws. 8 and 17 are kshatriyas and they not only admit the appellant to be belonging to their fold, but mention various customs common to them. Relying on the Madras District Gazeteer, Vizagapatnam, Vol. 1 P. 95., the Imperial Gazeteer of India, Vol. 1 Caste and Tribes of Southern India by E. Thurston, Mayne's Hindu Law, 11th Edition, para 64 and the caste of Chatturbhuj Vithaldas Jasani *v.* Moreshwar Parashram and others (1954 S. C. R. 817) it is contended that it is not correct to say that caste is the result of the birth and not of choice or volition, and a member of a scheduled tribe or a scheduled caste can by adopting the manner and customs rise in status of the twice-born class. Adverting to the argument relating to the President's order and the earlier decision in the Election Petition, it is

contended that the President's order is based on the declaration of the appellant himself and the respondent not being a party to the earlier Election Petition 7/55, the President's order and the earlier decision will have no effect.

It is universally acknowledged that caste is the result of birth and not of choice or volition. The mere performance of a ceremony which is performed by the twice-born class would elevate a shudra or the fourth class with the status of a twice-born class, but it may be said that as times are changing and there is very little importance to caste or creed and there is a tendency to inter-mix or inter-marry this thing may disappear. We do not deny that it is possible that a member of a scheduled tribe may in course of time adopt certain customs and practices in vogue among the Hindus, but in order to bring them within the fold of Hinduism it would take generations. Even if they come within the fold of Hinduism, question would arise whether they have formed separate sects among themselves, or they would belong to the 4th class, or to the twice-born class. This will again depend on circumstances and different considerations. That apart the mere performance of the ceremonies or adopting the ceremonies would not be enough to remove them from the fold of the original tribe unless, as has been observed by their Lordships of the Supreme Court in Chatturbhuj Vithaldas Jasani *v.* Moreshwar Parashram and others (1954 S. C. R. 817) reactions of the old body, the intentions of the individual himself and the rules of the new order are shown. It is not disputed that originally the appellant belonged to mukadora tribe. In order to prove that he ceased to be a member of that tribe, there should be first of all, evidence of intention, the reactions of the old body and that of the new body. Viewed in the light of these observations, the evidence discussed above, in our opinion, falls short of the test. The evidence only discloses that for the last 20 to 30 years the appellant and his family members were following the manners and customs of the twice-born. This alone, in our opinion, is not sufficient to hold that the appellant or his family members had ceased to be mukadoras. There is no evidence of the reactions of the old tribe. There is also no evidence as regards the reactions of the new fold, excepting that some of the kshatriyas recognise the appellant as kshatriya. We can understand this if this has been the result of generations, but the acceptance of the appellant as a kshatriya by one or two families would not in our opinion, be sufficient. We therefore do not agree with the view of the Tribunal that the appellant has ceased to be a member of the mokadoras. After this, the question whether he is recognised as a kshatriya does not arise for consideration. In view of this, we do not also wish to go into a detailed discussion as to what was the origin of the appellant.

There is no force in the contention of the learned counsel for the appellant that the fact that the respondent has become a Governor disqualifies him from being declared elected because the crucial period is the nomination time and admittedly the respondent was not a Governor then, but we need not discuss this point any further, as this question does not arise in view of the above discussion. The other contention also that if the appellant's election is void could the respondent be declared elected becomes unnecessary.

We are therefore of the opinion that as two separate nomination papers were not necessary the declaration by the Returning Officer that the appellant was elected should stand.

The appeal is allowed with costs against respondent—1, the order of the Tribunal is set aside and that of the Returning Officer restored. Counsel's fee Rs. 250/-.

Memorandum of Costs.

Appellant's Costs.	
Stamp for vakalatnama	5·00 nP
Do. used for the appeal memo	2·00 nP
Do. for enclosures	0·75 nP
Value of copy stamps and printing charges for enclosures.	0·00 nP
Batta and postage	4·31 nP
Advocate's fee (as fixed)	250·00 nP
Translation & Printing charges	301·22 nP
To be paid to the appellant by the 1st respondent.	563·28 nP

(Sd.) V. KRISHNASWAMY,
Deputy Registrar.

[No. 82/83/57.]

By order,
A. N. SEN, Under Secy.

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